

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2561

Introduced by Assembly Member Niello

February 22, 2008

An act ~~relating to pupil opportunities~~ to add Article 7.5 (commencing with Section 49045) to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, and to add Section 17053.98 to the Revenue and Taxation Code, relating to pupil opportunities, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, as amended, Niello. Pupil opportunities: *tuition tax credits for pupils enrolled in low-performing schools.*

Existing

(1) *Existing* law establishes the public school system in this state, and, among other things, provides for the establishment of school districts throughout the state and for the provision of instruction at the public elementary and secondary schools that these districts operate and maintain.

This bill would ~~express the intent of the Legislature to enact legislation to enable the parents or guardians of pupils in low-performing public elementary or secondary schools to transfer their children to high-performing public schools or qualifying nonsectarian private schools~~ *establish a program pursuant to which the parents or guardians of pupils attending public elementary or secondary schools that have had a score on the Academic Performance Index of 600 or less for 2 school years in a 4-year period would qualify for a tax credit for the*

payment of tuition at a private school meeting prescribed criteria. These provisions would become operative on July 1, 2010.

Because the bill would impose new duties on school districts, it would constitute a state-mandated local program.

(2) The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

This bill would, commencing with the taxable year beginning January 1, 2010, allow a credit in an amount equal to the amount of tuition, as defined, paid or incurred by the taxpayer for attendance of a pupil at an eligible private school participating in the program described in (1) above, or \$5,000, whichever is less, during the taxable year.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.5 (commencing with Section 49045) is
2 added to Chapter 6 of Part 27 of Division 4 of Title 2 of the
3 Education Code, to read:

4
5 Article 7.5. Tuition Assistance Tax Credits for Pupils Enrolled
6 in Low-Performing Schools

7
8 49045. (a) The Legislature finds and declares both of the
9 following:

10 (1) The state should provide a uniform, safe, secure, efficient,
11 and high-quality system that allows public elementary and
12 secondary school pupils the opportunity to obtain a high-quality
13 education.

1 (2) *A pupil should not be compelled, against the wishes of that*
2 *pupil's parent or guardian, to remain in a school found by the*
3 *state to be failing for two years in a four-year period.*

4 **(b)** *Therefore, it is the intent of the Legislature to enact*
5 *legislation to accomplish all of the following:*

6 **(1)** *To enhance the ability of pupils to gain knowledge and skills*
7 *necessary for success in postsecondary education, career*
8 *education, or the world of work by affording parents and guardians*
9 *the opportunity for their children to attend a public school that is*
10 *performing satisfactorily, or attend an eligible, as defined, private*
11 *school.*

12 **(2)** *In order to assist parents and guardians with any costs*
13 *associated with the private school tuition, the state shall provide*
14 *a full tax credit to the parents or custodial parent equal to the cost*
15 *of tuition at the eligible private school, but not to exceed five*
16 *thousand dollars (\$5,000) per year.*

17 **(3)** *In order to allow existing low-performing schools the time*
18 *necessary to meet satisfactory standards, this legislation will take*
19 *effect on July 1, 2010.*

20 49045.3. **(a)** *The parent or guardian of a public elementary*
21 *or secondary school pupil may request and receive from the state*
22 *a tax credit equal to the amount of tuition paid to an eligible*
23 *school, or five thousand dollars (\$5,000), whichever is less, if:*

24 **(1)** *By assigned school attendance area or by special*
25 *assignment, the pupil has spent the prior school year in attendance*
26 *at a public school that has been designated as failing to make*
27 *adequate progress, and that has had two school years in a*
28 *four-year period of that low performance, and the pupil's*
29 *attendance occurred during a school year in which that designation*
30 *was in effect.*

31 **(2)** *The pupil has been in attendance elsewhere in the public*
32 *school system, and has been assigned to a school described in*
33 *paragraph (1) for the next school year.*

34 **(3)** *The pupil is entering kindergarten or first grade, and the*
35 *parent or guardian has been notified that the pupil has been*
36 *assigned to a school described in paragraph (1) for the next school*
37 *year.*

38 **(b)** *This section shall not apply to a pupil who is enrolled in a*
39 *school operating for the purpose of providing educational services*
40 *to youth in a juvenile justice commitment program. For purposes*

1 of continuity of educational choice, the tax credit shall be available
2 to the parent or guardian of the pupil until the pupil returns to a
3 public school or, if the pupil's parent or guardian chooses to enroll
4 that pupil in a private school, of which the highest grade is grade
5 8, until the pupil matriculates to high school and the public high
6 school to which the pupil is assigned is an accredited school with
7 an Academic Performance Index score of 600 or better.

8 49045.5. (a) A school district shall, for each pupil enrolled in
9 or assigned to a public elementary or secondary school that has
10 an Academic Performance Index (API) score of 600 or less for
11 two school years in a four-year period:

12 (1) Timely notify the parent or guardian of the pupil as soon as
13 that designation is made of all options available pursuant to this
14 section.

15 (2) Offer that pupil's parent or guardian an opportunity to
16 enroll the pupil in public school within the district that has been
17 designated by the state as a school performing higher than that in
18 which the pupil is currently enrolled or to which the pupil has
19 been assigned, but with not less than an API score of 650. The
20 parent or guardian is not required to accept this offer in lieu of
21 requesting a state opportunity scholarship to a private school. The
22 opportunity to continue attending the higher performing public
23 school shall remain in force until the pupil graduates from high
24 school.

25 (b) The parent or guardian of a pupil enrolled in or assigned
26 to a school that has an API score of 600 or less for two school
27 years in a four-year period may choose as an alternative to enroll
28 the pupil in, and transport the pupil to, a higher-performing public
29 school that has available space in an adjacent school district.
30 Notwithstanding any other provision of law, the adjacent school
31 district shall accept the pupil and report the pupil for purposes of
32 that school district's state funding.

33 (c) A pupil with disabilities who is eligible to receive services
34 from the school district under federal or state law, and who
35 participates in the program established by this article, remains
36 eligible to receive services from the school district as provided by
37 federal or state law.

38 (d) If, for any reason, a qualified private school is not available
39 for the pupil, or if the parent or guardian of the pupil chooses to
40 request that the pupil be enrolled in the higher performing public

1 school, rather than choosing to use the state tax credit under
2 Section 17098.53 of the Revenue and Taxation Code, transportation
3 costs to the higher performing school shall be the responsibility
4 of the school district. The school district may utilize state
5 categorical transportation funds for this purpose.

6 49045.7. In order for parents or guardians to eligible for the
7 tax credit under Section 17053.98 of the Revenue and Taxation
8 Code, the private school attended by the child of those parents or
9 guardians shall comply with all of the following:

10 (a) Demonstrate fiscal soundness by being in operation for one
11 school year or by providing the State Department of Education
12 with a statement by a certified public accountant confirming that
13 the private school applying for participation is insured and the
14 owner or owners have sufficient capital or credit to operate the
15 school for the subsequent school year; serving the number of pupils
16 anticipated, with expected revenues from tuition and other sources
17 that may be reasonably expected. In lieu of the statement, a surety
18 bond or letter of credit for the amount equal to the opportunity
19 scholarship funds for any quarter may be filed with the department.

20 (b) The requirements of Section 220.

21 (c) The requirements of applicable state and local health and
22 safety laws and codes.

23 (d) Accept pupils on an entirely random basis without regard
24 to the pupil's past academic history. However, the private school
25 may give preference in accepting applications to siblings of pupils
26 who have already been accepted on a random basis.

27 (e) Be subject to the instruction, curriculum, and attendance
28 criteria adopted by an appropriate nonpublic school accrediting
29 body, and be academically accountable to the parent or guardian
30 for meeting the educational needs of the pupil. The private school
31 shall furnish a school profile that includes pupil performance data.

32 (f) The requirements of all applicable state statutes and
33 regulations relating to private elementary or secondary schools.

34 49046. (a) A pupil whose parent or guardian uses the tax
35 credit under Section 17053.98 of the Revenue and Taxation Code
36 shall remain in attendance throughout the school year, unless
37 excused by the school for illness or other good cause, and shall
38 comply fully with the school's code of conduct.

1 (b) If a pupil fails to comply with subdivision (a), his or her
2 parent or guardian shall not be eligible for the tax credit
3 authorized by Section 17053.98 of the Revenue and Taxation Code.

4 49046.3. Notwithstanding any other provision of law, no
5 liability shall arise on the part of the state based on any grant or
6 use of a tax credit under this article.

7 49046.5. The state board shall develop and adopt regulations
8 to implement this article. The inclusion of the use of tax credits
9 for attendance at eligible private schools within options available
10 to public elementary and secondary school pupils shall not be
11 construed to expand the regulatory authority of the state or its
12 officers or employees, or a school district, to impose any regulation
13 of private schools beyond those reasonably necessary to enforce
14 requirements expressly set forth in this article.

15 49046.7. This article shall become operative on July 1, 2010.

16 SEC. 2. Section 17053.98 is added to the Revenue and Taxation
17 Code, to read:

18 17053.98. (a) For each taxable year beginning on or after
19 January 1, 2010, there shall be allowed as a credit against the
20 "net tax," as defined by Section 17039, an amount equal to the
21 amount of tuition paid to a private school participating under
22 Article 7.5 (commencing with Section 49045) to Chapter 6 of Part
23 27 of Division 4 of Title 2 of the Education Code during the taxable
24 year, or five thousand dollars (\$5,000), whichever is less.

25 (b) For purposes of this section, "tuition" includes enrollment
26 fees, textbook fees, laboratory fees, and other fees related to
27 instruction, including the cost of transportation of the pupil
28 between his or her home and the school.

29 (c) In the case where the credit allowed by this section exceeds
30 the "net tax," the excess may be carried over to reduce the "net
31 tax" in the following year, and succeeding years if necessary, until
32 the credit has been exhausted.

33 SEC. 3. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.

38 SEC. 4. This act provides for a tax levy within the meaning of
39 Article IV of the Constitution and shall go into immediate effect.

1 ~~SECTION 1.—It is the intent of the Legislature to enact~~
2 ~~legislation to enable the parents or guardians of pupils in~~
3 ~~low-performing public elementary or secondary schools to transfer~~
4 ~~their children to high-performing public schools or qualifying~~
5 ~~nonsectarian private schools.~~

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